

House File 2175 - Introduced

HOUSE FILE 2175
BY TYMESON

A BILL FOR

1 An Act to prohibit city annexations containing territory not
2 voluntarily included by a landowner.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9.2, Code 2009, is amended to read as
2 follows:

3 **9.2 Records relating to cities.**

4 The secretary of state shall receive and preserve in the
5 secretary's office all papers transmitted to the secretary
6 in relation to city development, including incorporation,
7 discontinuance, annexation, or boundary adjustment; and shall
8 keep an alphabetical list of cities in a book provided for
9 that purpose, in which shall be entered the name of the city,
10 the county in which situated, and the date of incorporation,
11 discontinuance, annexation, or boundary adjustment.

12 Sec. 2. Section 368.1, subsection 4, Code 2009, is amended
13 to read as follows:

14 4. "*Boundary adjustment*" means ~~annexation~~, severance or
15 consolidation.

16 Sec. 3. Section 368.6, Code 2009, is amended to read as
17 follows:

18 **368.6 Intent.**

19 It is the intent of the general assembly to provide an
20 annexation approval procedure which gives due consideration to
21 the wishes of the residents of territory to be annexed, and to
22 the interests of the residents of all territories affected by
23 an annexation. The general assembly presumes that a voluntary
24 annexation of territory ~~more~~ most closely reflects the wishes
25 of ~~the residents~~ each resident of territory to be annexed,
26 and, therefore, intends that the annexation approval procedure
27 include a presumption of validity for voluntary annexation
28 approval.

29 Sec. 4. Section 368.7, subsection 1, Code 2009, is amended
30 by striking the subsection and inserting in lieu thereof the
31 following:

32 1. All of the owners of land in a territory adjoining a
33 city may apply in writing to the council of the adjoining city
34 requesting annexation of the territory. An owner's land shall
35 not be included in the territory to be annexed, unless the

1 landowner has joined in the application to the council.

2 Sec. 5. Section 368.7, subsection 4, Code 2009, is amended
3 by striking the subsection.

4 Sec. 6. Section 368.7, subsection 5, Code 2009, is amended
5 to read as follows:

6 5. In the discretion of a city council, the resolution
7 provided for in ~~subsection 1, paragraph "d", or subsection 2 or~~
8 ~~3,~~ may include a provision for a transition for the imposition
9 of city taxes against property within the annexation area ~~as~~
10 ~~provided in section 368.11, subsection 3, paragraph "m".~~ The
11 provision shall allow for an exemption from taxation of the
12 following percentages of assessed valuation according to the
13 following schedule:

14 a. For the first and second years, seventy-five percent.

15 b. For the third and fourth years, sixty percent.

16 c. For the fifth and sixth years, forty-five percent.

17 d. For the seventh and eighth years, thirty percent.

18 e. For the ninth and tenth years, fifteen percent.

19 An alternative schedule may be adopted by the city council.

20 However, an alternative schedule shall not allow a greater
21 exemption than that provided in this subsection. The exemption
22 shall be applied in the levy and collection of taxes. The
23 provision may also allow for the partial provision of city
24 services during the time in which the exemption from taxation
25 is in effect. If the city council provides for a transition
26 for the imposition of city taxes against property in an
27 annexation area, all property owners included in the annexation
28 area must receive the transition upon completion of the
29 annexation.

30 Sec. 7. Section 368.11, subsection 1, Code 2009, is amended
31 to read as follows:

32 1. A petition for incorporation, discontinuance, or
33 boundary adjustment may be filed with the board by a city
34 council, a county board of supervisors, a regional planning
35 authority, or five percent of the registered voters of a city

1 or territory involved in the proposal. Notice of the filing,
2 including a copy of the petition, must be served upon the
3 council of each city for which a discontinuance or boundary
4 adjustment is proposed, the board of supervisors for each
5 county which contains a portion of a city to be discontinued or
6 territory to be incorporated, ~~annexed~~ or severed, the council
7 of a city if an incorporation includes territory within the
8 city's urbanized area, and any regional planning authority for
9 the area involved.

10 Sec. 8. Section 368.11, subsection 3, paragraph j, Code
11 2009, is amended to read as follows:

12 *j.* In a case of ~~annexation or~~ incorporation, the petition
13 must state that none of the territory is within a city.

14 Sec. 9. Section 368.11, subsection 3, paragraphs m and n,
15 Code 2009, are amended by striking the paragraphs.

16 Sec. 10. Section 368.11, subsections 4 through 6, Code 2009,
17 are amended by striking the subsections.

18 Sec. 11. Section 368.12, Code 2009, is amended to read as
19 follows:

20 **368.12 Dismissal.**

21 The board may dismiss a petition only if it finds that the
22 petition does not meet the requirements of this chapter, or
23 that substantially the same incorporation, discontinuance, or
24 boundary adjustment has been disapproved by a committee formed
25 to consider the proposal, or by the voters, within the two
26 years prior to the date the petition is filed with the board,
27 ~~or that the territory to be annexed, or a portion of that~~
28 ~~territory, has been voluntarily annexed under section 368.7.~~
29 The board shall file for record a statement of each dismissal
30 and the reason for it, and shall promptly notify the parties to
31 the proceeding of its decision.

32 Sec. 12. Section 368.14, unnumbered paragraph 1, Code 2009,
33 is amended to read as follows:

34 If ~~an involuntary~~ a petition filed under section 368.11 is
35 not dismissed, the board shall direct the appointment of local

1 representatives to serve with board members as a committee
2 to consider the proposal. Each local representative is
3 entitled to receive from the state the representative's actual
4 and necessary expenses spent in performance of committee
5 duties. Three board members and one local representative,
6 or if the number of local representatives exceeds one, three
7 board members and at least one-half of the appointed local
8 representatives, are required for a quorum of the committee.
9 A local representative must be a registered voter of the
10 territory or city which the representative represents, and must
11 be selected as follows:

12 Sec. 13. Section 368.14, subsections 3 and 4, Code 2009, are
13 amended to read as follows:

14 3. From a territory to be ~~annexed to or~~ severed from a
15 city, one representative appointed by the county board of
16 supervisors. If there are no registered voters residing in
17 an area to be ~~annexed to or~~ severed from a city, the county
18 board of supervisors shall appoint as local representative an
19 individual owning property in the territory whether or not the
20 individual is a registered voter or appoint a designee of such
21 individual. If the territory is in more than one county, the
22 board shall direct the appointment of a local representative
23 from each county involved by its board of supervisors.

24 4. From a city ~~to which territory is to be annexed or~~ from
25 which territory is to be severed, one representative appointed
26 by the city council. If the territory is in more than one
27 county, the board shall direct the appointment of an equal
28 number of city and county local representatives.

29 Sec. 14. Section 368.14A, Code 2009, is amended to read as
30 follows:

31 **368.14A Special local committees.**

32 When two or more petitions for city development action
33 ~~or applications for voluntary annexation~~ describing common
34 territory are being considered together, the board shall
35 direct the appointment of representatives for each of the

1 petitions to serve on one special committee to consider the
2 petitions. Expense reimbursement and qualifications of these
3 representatives shall be as provided in section 368.14. Three
4 board members and at least one-half of the appointed local
5 representatives are required for a quorum of the special local
6 committee. The manner of appointment of representatives shall
7 be the same as for single petition committees as provided in
8 section 368.14. The special committee shall consider the
9 petitions in conformity with the provisions of this chapter,
10 and shall resolve common territory issues between petitioners.
11 The special committee shall conduct a public hearing on the
12 petitions pursuant to section 368.15. If the common territory
13 issue is resolved, the special local committee may approve the
14 resulting compatible petitions by a single vote or separately,
15 in its discretion.

16 Sec. 15. Section 368.15, Code 2009, is amended to read as
17 follows:

18 **368.15 Public hearing.**

19 The committee shall conduct a public hearing on a proposal
20 as soon as practicable. Notice of the hearing must be served
21 upon the council of each city for which a discontinuance
22 or boundary adjustment is proposed, the county board of
23 supervisors for each county which contains a portion of a
24 city to be discontinued or territory to be incorporated,
25 annexed, or severed, and any regional planning authority for
26 the area involved. A notice of the hearing, which includes a
27 brief description of the proposal and a statement of where the
28 petition or plan is available for public inspection, must be
29 published as provided in section 362.3, except that there must
30 be two publications in a newspaper having general circulation
31 in each city and each territory involved in the proposal.
32 Any person may submit written briefs, and in the committee's
33 discretion, may be heard on the proposal. The board may
34 subpoena witnesses and documents relevant to the proposal.

35 Sec. 16. Section 368.17, Code 2009, is amended to read as

1 follows:

2 **368.17 When approval barred.**

3 The committee may not approve:

- 4 1. An incorporation unless it finds that the city to be
5 incorporated will be able to provide customary municipal
6 services within a reasonable time.
- 7 2. A discontinuance or severance if the city to be
8 discontinued or the territory to be severed will be surrounded
9 by one or more cities unless ~~a petition~~ an application for
10 annexation of the same area is also filed and approved pursuant
11 to section 368.7.

12 3. A discontinuance or severance unless it finds that
13 the county or another city will be able to provide necessary
14 municipal services to the residents.

15 ~~4. An annexation unless the territory is adjoining the~~
16 ~~city to which it will be annexed, and the committee finds that~~
17 ~~the city will be able to provide to the territory substantial~~
18 ~~municipal services and benefits not previously enjoyed by such~~
19 ~~territory, and that the motive for annexation is not solely to~~
20 ~~increase revenues to the city.~~

21 ~~5.~~ 4. A consolidation unless the cities are contiguous.

22 ~~6.~~ 5. An incorporation of territory, any part of
23 which is within two miles of an existing city, unless a
24 ~~petition~~ an application for annexation of substantially the
25 same territory to such city under section 368.7 has been
26 ~~dismissed, disapproved, or voted upon unfavorably~~ by the city
27 council of the existing city or by the board within the last
28 five years.

29 ~~7.~~ 6. A city development action which creates an island.

30 Sec. 17. Section 368.19, subsections 1 and 2, Code
31 Supplement 2009, are amended to read as follows:

- 32 1. The committee shall approve or disapprove the petition
33 or plan as amended, within ninety days of the final hearing,
34 and shall file its decision for record and promptly notify the
35 parties to the proceeding of its decision. If a petition or

1 plan is approved, the board shall submit the proposal at an
 2 election held on a date specified in section 39.2, subsection
 3 4, paragraph "a" or "b", whichever is applicable, and the county
 4 commissioner of elections shall conduct the election. In a
 5 case of incorporation or discontinuance, registered voters of
 6 the territory or city may vote, and the proposal is authorized
 7 if a majority of those voting approves it. In a case of
 8 ~~annexation or severance~~, registered voters of the territory
 9 and of the city may vote, and the proposal is authorized if a
 10 majority of the total number of persons voting approves it. In
 11 a case of consolidation, registered voters of each city to be
 12 consolidated may vote, and the proposal is authorized only if
 13 it receives a favorable majority vote in each city. The county
 14 commissioner of elections shall publish notice of the election
 15 as provided in section 49.53 and shall conduct the election in
 16 the same manner as other special elections.

17 2. The city shall provide to the commissioner of
 18 elections a map of the area to be incorporated, discontinued,
 19 ~~annexed~~, severed, or consolidated, which must be approved by
 20 the commissioner as suitable for posting. The map shall be
 21 displayed prominently in at least one place within the voting
 22 precinct, and inside each voting booth.

23 Sec. 18. Section 368.20, Code 2009, is amended to read as
 24 follows:

25 **368.20 Procedure after approval.**

26 1. After the county commissioner of elections has certified
 27 the results to the board, the board shall:

28 ~~1-~~ a. Serve and publish notice of the result as provided
 29 in section 362.3.

30 ~~2-~~ b. File with the secretary of state and the clerk of
 31 each city incorporated or involved in a boundary adjustment,
 32 and record with the recorder of each county which contains
 33 a portion of any city or territory involved, copies of the
 34 proceedings including the original petition or plan and any
 35 amendments, the order of the board approving the petition

1 or plan, proofs of service and publication of required
2 notices, certification of the election result, and any other
3 material deemed by the board to be of primary importance to
4 the proceedings. Upon proper filing and expiration of time
5 for appeal, the incorporation, discontinuance, or boundary
6 adjustment is complete. However, if an appeal to any of
7 the proceedings is pending, completion does not occur until
8 the appeal is decided, unless a subsequent date is provided
9 in the proposal. The board shall also file with the state
10 department of transportation a copy of the map and legal land
11 description of each completed incorporation or corporate
12 boundary adjustment completed under sections 368.11 through
13 368.22 or approved annexation within an urbanized area.

14 2. After approving an application for annexation described
15 in section 368.7, subsection 3, the board shall file with the
16 secretary of state and the clerk of each city involved in the
17 annexation, and record with the recorder of each county which
18 contains a portion of any city or territory involved, copies
19 of the proceedings including the original application and any
20 amendments, the order of the board approving the application,
21 proofs of service and publication of required notices, and any
22 other material deemed by the board to be of primary importance
23 to the proceedings. Upon proper filing and expiration of time
24 for appeal, the annexation is complete. However, if an appeal
25 to any of the proceedings is pending, completion does not
26 occur until the appeal is decided, unless a subsequent date is
27 provided in the application. The board shall also file with
28 the state department of transportation a copy of the map and
29 legal land description of each completed annexation.

30 Sec. 19. Section 368.21, Code 2009, is amended to read as
31 follows:

32 **368.21 Supervision of procedures.**

33 When an incorporation, discontinuance, annexation, or
34 boundary adjustment is complete, the board shall supervise
35 procedures necessary to carry out the proposal. In the case of

1 an incorporation, the county commissioner of elections shall
2 conduct an election for mayor and council of the city, who
3 shall serve until their successors take office following the
4 next regular city election. In the case of a discontinuance,
5 the board shall publish two notices as provided in section
6 368.15 that it will receive and adjudicate claims against the
7 discontinued city for a period of six months from the date
8 of last notice, and shall cause necessary taxes to be levied
9 against the property within the discontinued city to pay
10 claims allowed. All records of a discontinued city shall be
11 deposited with the county auditor of the county designated by
12 the board. Any remaining balances shall be deposited in the
13 county treasury where the former city was located. In the
14 case of a boundary adjustments adjustment or annexation, the
15 proper city officials shall carry out procedures necessary to
16 implement the proposal.

17 Sec. 20. Section 368.25, Code 2009, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **368.25 Failure to provide municipal services.**

20 1. A landowner within the boundaries of a city may file
21 a petition for severance with the city development board if
22 the petitioner's land, following annexation under section
23 368.7, has not been provided municipal services for a period
24 of three years, or the city has failed to show substantial and
25 continuing progress in the provision of municipal services.

26 2. Upon the receipt of a petition under subsection 1, the
27 city development board may initiate proceedings to sever the
28 annexed territory from the city. The board shall notify the
29 city of the severance proceedings and shall hold a public
30 hearing on the proposed severance. The board shall give notice
31 of the hearing in the same manner as notice of a public meeting
32 in section 368.11.

33 3. The board may order severance of all or a portion of the
34 territory and the order to sever is not subject to approval at
35 an election. A city may request that the board allow up to an

1 additional three years to provide municipal services if good
2 cause is shown.

3 4. As an alternative to severance of the territory, the
4 board may impose a moratorium on additional annexation by
5 the city until the city complies with its plan for extending
6 municipal services.

7 EXPLANATION

8 This bill relates to the authority of a city to annex
9 territory.

10 Current Code section 368.7 relating to voluntary annexation
11 allows an application for annexation to include up to 20
12 percent of the land area in the proposed annexation territory
13 without consent of the landowner. The bill amends Code section
14 368.7 by specifying that a landowner's property may not be
15 included in the territory to be annexed unless the landowner
16 has joined in the application to the city council.

17 The bill eliminates the involuntary annexation procedure in
18 Code section 368.11 by removing annexation from the definition
19 of "boundary adjustment". The bill removes references to
20 annexation within Code section 368.11 and removes procedures
21 and requirements in Code section 368.11 which only apply to
22 annexation.

23 The bill strikes Code section 368.25, relating to a city's
24 failure to provide municipal services to territory within an
25 annexed area and inserts provisions which allow a landowner to
26 petition the city development board for severance if the city
27 has not provided municipal services within three years of a
28 voluntary annexation under Code section 368.7.

29 The bill removes references to nonconsenting landowners and
30 involuntary annexation as it relates to annexation by cities
31 throughout Code chapter 368.